



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 15, 1996

Mr. Roland Castaneda  
General Counsel  
Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR96-0199

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38238.

Dallas Area Rapid Transit (DART) received a request for eight categories of information pertaining to its employee who is DART's representative to and a board member of the North Central Texas Regional Certification Agency (NCTRCA). You have submitted copies of the requested information to this office for review, and you claim that the information is excepted from required public disclosure by section 552.103 of the Government Code.

Section 552.103(a)(1) excepts from disclosure information relating to litigation "to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party." The governmental body has the burden of providing relevant facts and documents to show that section 552.103 is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

Board members of NCTRCA voted to terminate NCTRCA's Executive Director, Mr. Carlos Cordova, from his position in February of 1995. By letter dated December 22, 1995, Mr. Cordova's attorney notified NCTRCA, DART, a member entity of NCTRCA, and others that Mr. Cordova alleges wrongful termination, violation of his civil rights, and other causes of action. In this letter Mr. Cordova's attorney extends an opportunity to

its member entities, and individual board members if a settlement could not be reached by January 10, 1996.

You state that DART, in its capacity as a member entity of NCTRCA, anticipates litigation relating to Mr. Cordova's claims. Further, Mr. Cordova has threatened to sue DART's employee in his individual capacity as a board member or NCTRCA. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986). We have ruled that where an attorney's letter demands damages and threatens to file suit, litigation is reasonably anticipated. Open Records Decision No. 551 (1990). See Open Records Decision 638 (1995). Therefore, we agree that DART reasonably anticipates litigation relating to Mr. Cordova's termination. You have demonstrated the relationship of the requested information to reasonably anticipated litigation. Therefore, DART may withhold the requested information from disclosure pursuant to section 552.103.

We note that once all parties to litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decisions Nos. 551 (1990), 454 (1986). Further, once the litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref.: ID# 38238

Enclosures: Submitted documents

cc: Mr. Gregory J. McCarthy  
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(w/o enclosures)